

**FILED**

**NOV 30 2018**

Clerk, U.S. District Court  
District Of Montana  
Missoula

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

JOSEPH E. LUTGEN,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security  
Administration,

Defendants.

CV 18-09-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on September 7, 2018, recommending to dismiss Petitioner Joseph E. Lutgen's Complaint (Doc. 1) for failure to serve Defendant under Federal Rule of Civil Procedure 4(m). (Doc. 4.) The Findings and Recommendation were sent to Plaintiff twice and returned as undeliverable, first on September 10, 2018 (Doc. 5) and then again, on September 14, 2018 (Doc. 6). His failure to timely object to the Findings and Recommendation has resulted in a waiver of the right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)

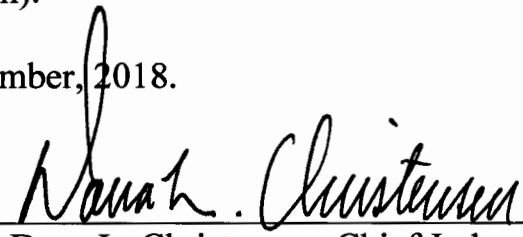
(en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the record, the Court finds no clear error in Judge Lynch’s finding the Plaintiff has not accomplished service on the Defendant in accordance with Rule 4(m) and therefore is subject to dismissal. On August 24, 2018 Plaintiff was warned that his failure to respond to the Court’s request for good cause would result in dismissal without prejudice and was given until August 24, 2018 to respond. Plaintiff did not respond. Therefore the Court adopts the Findings and Recommendation in full and will dismiss Plaintiff’s Complaint without prejudice.

Accordingly, IT IS ORDERED that:

- (1) Judge Lynch’s Findings and Recommendation (Doc. 4) is ADOPTED IN FULL.
- (2) Lutgen’s Complaint (Doc. 1) is DISMISSED without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

DATED this 30<sup>th</sup> day of November, 2018.

  
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Dana L. Christensen, Chief Judge  
United States District Court